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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,637	12/12/2000	Greg Volgas	HCC-9 (306*141)	4754

23416 7590 11/22/2002

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EXAMINER

LOVERING, RICHARD D

ART UNIT	PAPER NUMBER
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1712

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DATE MAILED: 11/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

09/134,637

Applicant(s)

VOLGAS ET AL.

Examiner

LOVERING

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- ☒ Responsive to communication(s) filed on SEPT. 9 (CONF 9/3) AND 16, 2002.
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- ☒ Claim(s) 29, 31-35, 37, 38, 40-48, 50 AND 51 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☒ Claim(s) 42-46 is/are allowed.
- ☒ Claim(s) 29, 31-35, 37, 38, 40, 41, 47, 48, 50 AND 51 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 9
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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1. In view of the papers filed September 16, 2002, the inventorship of this non-provisional application has been changed by the deletion of Robert Mack.

The application will be forwarded to the Office of Initial Patent Examination (OIPE) for issuance of a corrected filing receipt, and correction of the file jacket and PTO PALM data to reflect the inventorship as corrected.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims (29), 31-35, 38, 47, 48 and 51 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Arranaga 5,045,588, esp. Examples 2 and 4. Note that the polyacrylamide or poly(ethylene oxide) are deposition or drift reducing agents, the organoclay derivative is a silicon based oil thickener, and the wetting agent is a surfactant. *US 5,045,588 as to (47) & (48) and (51)*

4. Claims 37, 40, 41 and (50) are rejected under 35 U.S.C. § 103(a) as being unpatentable over Arranaga et al. above in view of Martin et al. 5,466,458. The especially pertinent part of Arranaga is pointed out in the preceding paragraph. While Arranaga does not disclose a pesticide or an insecticide, it would have been obvious to one skilled in the art at the time applicants' invention was made to incorporate the permethrin and S-bioallethrin or chlorpyrifos <sup>hy</sup>metal of Examples 1A or 7, resp. of Martin et al. in the composition of Example 2 or 4 of Arranaga *71*

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to impart a pesticidal or insecticidal property thereto. The use of a known additive for its known function lacks patentable significance. See In re Sussman, 554 O.G. 17, 1943 C.D. 518.

5. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 31-35, 40, 41 and 50 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

Claims 31-35, 40, 41 and 50 are indefinite and incomplete in depending, directly or ultimately, upon a cancelled claim, i.e. claim 3-0, 39 or 49.

7. Applicants' arguments filed September 9, 2002 have been fully considered but they are not deemed to be persuasive. Organoclay derivatives are silicon based oil thickeners because they are aluminosilicates and contain  $\text{SiO}_2$ . Applicants themselves contemplate the use of silicates. See specification page 8, lines 6-8.

8. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record doesn't disclose or fairly suggest the compositions covered by

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applicants' claims 42-46 for the reasons presented in their remarks in the amendment filed September 9, 2002.

9. The references listed on the attached Form PTO-1449 have been considered and made of record.

10. **THIS ACTION IS MADE FINAL.** Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Lovering whose telephone number is (703) 308-0443. The examiner can normally be reached on Mon.-Fri. from 7:30 A.M. to 4:00 P.M.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Dawson, can be reached on (703) 308-2340. The fax phone number for this Group is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

R. Lovering:cdc  
November 20, 2002

RICHARD D. LOVERING  
PRIMARY EXAMINER  
GROUP ~~1200~~ 1700